Bail slip

The Petitioner/Accused namely Rajan was directed to be released on bail as per the order of this Court dated 20.1.2007 in CMP.No.3163/2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.442 of 2006

Rajan ..Appellant

-vs-

State represented by
The Inspector of Police
All Women Police Station
Tirupattur
Vellore District . .. Respondent

This appeal is filed against the Judgment made in S.C.No.350/2005 dated 24.04.2006 on the file of the Additional Sessions Judge cum- Fast Track Court,Tirupathur.

For appellant : Mr.R.Sankara Subbu

For respondent : Mr.V.R.Balasubramaniam,
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred by the accused in S.C.No.350 of 2005 on the file of the Additional Sessions Judge-cum- Fast Track Court, Tirupathur. The accused who was charged under Sections 376 and 417 of IPC and was tried and convicted and sentenced for an offence under Section 376 of IPC to undergo ten years rigorous imprisonment and a fine of Rs.500/- with default sentence and also under Section 417 of IPC to undergo one year rigorous imprisonment is the appellant herein.

2. The learned committal Judge,Judicial Magistrate No.1, Tirupathur, after taking the chargesheet on file as P.R.C.No.11 of 2005 had issued summons to the accused and on his appearance had furnished copies under Section 207 of Cr.P.C. and since the case is triable by a Court of Sessions, had committed the case to the Court of Sessions under Section 209 of Cr.P.C.. The learned Sessions Judge, FTC Tirupathur had framed charges against the accused on his appearance before him under Sections

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376 and 417 of IPC and when the charges were explained to the accused and questioned the accused pleaded not guilty.

3. Before the trial Court P.Ws 1 to 9 were examined and Exs P1 to P8 were exhibited . No material objects were marked before the trial Court in this case.

4. P.W.1 is the victim girl who would admit that some two years prior to the date of deposition before the trial Court, the accused under the pretext of marrying her had sexual intercourse with her near the bund of a stream and she would admit that at the time of the ococurrence, she was aged 17. She would further depose that by saying that he will marry her (P.W.1),he continued the sexual assault on her on very many occasions resulting her becoming pregnant. On 12.7.2004 according to her, the accused took her to a doctor for aborting the foetus. But the doctor has refused to abort the child. On the assurance of the accused that he will take her to some other town and will marry there, she gave her ear stud to meet the expenses to him. On 20.7.2004, the accused took her to Pudur Village and consulted a lady doctor for aborting the child but the lady doctor also refused to abort the child. Thereafter, she had informed her parents that she is in the family way and that the accused is responsible for the same and that there was a panchayat took place on 20.7.2004 in the house of the accused in the presence of his brothers and relatives but the said panchayat ended in vain. Thereafter, she had preferred a complaint with All Woman Police on 31.7.2004. Ex P1 is the complaint.

4a.P.W.2 is the mother of P.W.1. According to her, P.W.1 had informed about the occurrence at the time, when she enquired about the missing of her ear studs and that she came to know from P.W.1 that she is pregnant and that there was a panchayat took place in the house of the accused in the presence of his relatives but the panchayat failed to produce any result in her favour. Hence P.W.1 had preferred a complaint to the All Women Police Station and that now P.W.1 has delivered a male child.

4b. P.W.8 is then Inspector of All Women Police Station, Tirupathur . On 13.10.2004, P.W.1 came to the police station and preferred a complaint which was registered by her under Tirupathur All Women Police Station Crime No.14 of 2004 under Sections 417,420 and 376 of IPC. She has recorded the statement of the witnesses.

4c. P.W.7 is the then Inspector of police who took up the investigation in this case. On 17.8.2004 while he was working as Inspector of Police Tirupathur, he was in charge of All Women Police Station. After receiving the copy of the first information report ,he had subjected P.W.1 for medical examination. He had visited the place of occurrence and prepared ExP2 observation Mahazar in the presence of P.W.3. Ex P8 is the rough sketch drawn by P.W.7. He had arrested the accused on the same day at 19.45hours and also subjected the accused to medical examination.

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4d. P.W.9 is the successor of P.W.5. Ex P4 is the first information report. P.W.6 is the doctor who had examinend P.W.1 and issued Ex P5 and Ex P6 O.P.chits and ExP7 wound certificate. According to her, the hymen of the victim girl was found ruptured and that she was carrying a foetus with a duration of 14 to 16 weeks. The Doctor has opined that the age of P.W.1 on her appearance is 17 years and also according to P.W.1. P.W.8 has also took up part of the investigation and examined some of the witnesses and recorded their statements. P.W.9 after completing the formalities had filed the charge sheet against the accused on 30.8.2005 under Sections 417,420 and 376 of IPC.

5. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, he would deny his complicity with the crime.
No witness was examined on the side of the accused.

6. The learned trial Judge, after meticulously going through the evidence both oral and documentary has come to a conclusion that the charge levelled against the accused under Sections 376 of IPC and 417 of IPC have been proved beyond any reasonable doubt and accordingly convicted and sentenced the accused to undergo ten years rigorous imprisonment and a fine of Rs.500/- with default sentence under Section 376 of IPC and also convicted and sentenced the accused under Section 417 of IPC to undergo one year rigorous imprisonment.which necessitated the accused to prefer this appeal before this Court.

7. Now the point for consideration in this appeal is whether the conviction and sentence against the accused under Sections 376 and 417 of IPC is sustainable for the reasons stated in the memorandum of appeal?

8.Heard Mr.R.Sankarasubbu, learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and carefully considered their rival submissions.

9. The Point:

Mr.R.Sankarasubbu, the learned counsel appearing for the appellant would submit that even according to the case of the prosecution, the age of the victim girl P.W.1 at the time of the occurrence was 17 and that the accused had sexual intercourse with P.W.1 for more than once resulting in her pregnancy . Under such circumstances, the ingredients required under Section 375 of IPC is not made out in this case.

10. P.W.1 the victim girl has admitted even in the chief examination that at the time of occurrence, she was 17 years of age. The Doctor P.W.6 who had examined P.W.1 on 17.8.2004 at 8.55p.m., has also stated in her evidence that even according to the version of P.W.1 and also on appearance of P.W.1 she is aged 17 years. The prosecution has not filed any documentary evidence or any medical evidence apart from P.W.6 to say

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that at the time of commission of offence, the victim girl P.W.1 was below 16 years of age. Under such circumstances, I am of the view that the conviction and sentence of the learned trial Judge under Section 376 of IPC will not be sustainable.

11. Now let us consider the conviction and sentence under Section 417 of IPC of the learned trial Judge is sustainable? It is in evidence that only under the pretext of marrying her, the accused had committed the sexual intercourse with P.W.1 with her consent. It is seen from the evidence of P.W.1 and P.W.2, the mother of P.W.1, that there was a panchayat took place in the house of the accused in the presence of his relatives since the accused had refused to marry P.W.1. It is in evidence that the brother of the victim girl was also assaulted in one of the panchayat and there was also a criminal case registered on that score which is admitted by P.W.9, the then Inspector of All Women Police Station,Tirupathur. The evidence of P.W.1 coupled with the medical evidence of P.W.6 will go to show that the victim girl was subjected to sexual intercourse by the accused under the false promise of marrying her. Under such circumstances, I am of the view that the conviction of the learned trial Judge under Section 417 of IPC against the accused is sustainable.

12. When coming to the question of sentence, the learned counsel appearing for the appellant would submit that the accused is in jail for nearly nine months and that the victim girl P.W.1 was also given in marriage to another person. Under such circumstances, instead of sending the accused to prison once again, some fine may be imposed on the accused by modifying the sentence to that of the period already undergone.

13.In fine, the appeal is partly allowed and the conviction and sentence of the learned trial Judge in S.C.No.350 of 2005 on the file of the Additional Sessions Judge-cum-Fast Track Court, Tirupathut under Section 376 of IPC is set aside. But the conviction under Section 417 of IPC by the learned trial Judge in S.C.No.350 of 2005 is hereby confirmed. But the sentence is modified to that of the period already undergone and a fine of Rs.25,000/- in default to undergo three months simple imprisonment. The entire fine amount is awarded as a compensation to P.W.1 the victim girl under Section 357(1) of Cr.P.C. Two months time is given to the accused to pay the compensation amount of Rs.25,000/- to the victim

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girl P.W.1 from today. The accused is entitled to get refund of the fine amount of Rs.500/- paid by him before the trial Court under Section 376 of IPC.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg
To

1. The Additional Sessions Judge(Fast Track Court) Tirupathur

2. The Principal District and Sessions Judge, Vellore.

3. The Judicial Magistrate , Tirupathur

4. -do-through the Chief Judicial Magistrate, Vellore

5. The Public Prosecutor, High Court, Madras

6. The District Collector, Vellore

7. The Director General of Police, Mylapore,Chennai

8. The Superintendent of Central Prison, Vellore

9. The Inspector of Police, All Women Police Station, Tirupathur, Vellore District.

Crl.A.No.469 of 2003

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gp/21.8.

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